

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CHARLES ELLIS SHIRLEY, #2071816	§	
VS.	§	CIVIL ACTION NO. 6:17cv231
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

Petitioner Charles Ellis Shirley, an inmate formerly confined within the Texas Department of Criminal Justice (TDCJ) proceeding *pro se*, filed this petition for a writ of habeas corpus pursuant to § 2254 complaining of the legality of his criminal conviction. The case was referred to the United States Magistrate Judge, the Honorable Judge K. Nicole Mitchell, for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On June 10, 2019, Judge Mitchell issued a Report, (Dkt. #29), recommending that Petitioner's federal habeas petition be dismissed, without prejudice, for Petitioner's failure to prosecute his case. Specifically, Judge Mitchell explained that legal mail sent to Petitioner returned to the Court with a notation that "offender is no longer in the system," (Dkt. #28). Moreover, a search within TDCJ records confirms that Petitioner is no longer confined. Most recently, Judge Mitchell's Report and Recommendation was returned to the Court with the same notation—"offender is no longer in the system." (Dkt. #30). To date, no objections to the Report have been received.

Given that Petitioner has not submitted a change of address, the Court cannot locate him, and he has not communicated with the Court since June 2017, Judge Mitchell found that Petitioner failed to prosecute his case. *See McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988).

Because no objections to Judge Mitchell's Report have been filed, Petitioner is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

**ORDERED** that the Report of the United States Magistrate Judge, (Dkt. #29), is **ADOPTED** as the opinion of the court. Further, it is

**ORDERED** that Petitioner's federal petition for a writ of habeas corpus is **DISMISSED**, without prejudice, for Petitioner's failure to prosecute his case. Further, it is

**ORDERED** that a certificate of appealability is **DENIED** *sua sponte*. The denial of a certificate of appealability at this time has no effect on Petitioner's right to refile. Finally, it is

**ORDERED** that any and all motions which may be pending in this civil action are hereby **DENIED**.

So **ORDERED** and **SIGNED June 30, 2019**.



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Ron Clark, Senior District Judge